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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 615

SOCIEDAD ESPANOLA DE AUXILIO MUTUO Y BENEFICENCIA DE PUERTO RICO, PETITIONER

v.

RAFAEL A. BUSCAGLIA, TREASURER OF PUERTO RICO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals on the motion to dismiss (R. 127) is not reported. Its opinion on petition for rehearing (R. 129–132) is reported in 164 F. 2d 745.[1]

[1] The opinion of the Supreme Court of Puerto Rico (R. 93–103), from whose judgment the appeal to the Circuit Court of Appeals was taken, has not yet been reported. It has no bearing upon the question presented by the petition for certiorari.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 10, 1947 (R. 127). A timely petition for rehearing was denied December 12, 1947 (R. 132). The petition for a writ of certiorari was filed February 20, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether upon an appeal from a judgment of the Supreme Court of Puerto Rico sustaining an assessment which would require the appellant to pay a tax of $2,957.96, "the value in controversy" exceeds $5,000.

STATUTE INVOLVED

Section 128 of the Judicial Code as amended, 28 U. S. C. sec. 225, provides in part:

> The circuit courts of appeal shall have appellate jurisdiction to review by appeal final decisions —
>
> * * * * *
>
> Fourth. In the Supreme Courts of the Territory of Hawaii and of Puerto Rico, in all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of interests and costs, exceeds

$5,000, and in all habeas corpus proceedings.

* * * * *

STATEMENT

The instant proceeding was commenced by filing a petition of appeal to the Tax Court of Puerto Rico (R. 1–2). The petition stated that it was a complaint against an appraisal of $142,210 put upon petitioner's property for the fiscal year 1941–1942. It asserted that the appraisal was erroneous because petitioner was a charitable society and therefore exempted from taxes by Section 291 (e) of the Political Code of Puerto Rico. And it prayed that "the complaint be granted, leaving without force and effect the appraisal made, and exempting [petitioner] from the payment of taxes" (R. 2).

Thereafter, the Tax Court entered an order that "the appraisement taken in this case is hereby vacated, since [petitioner] enjoys a tax exemption under Section 291 of the Political Code" (R. 88). However, the Supreme Court of Puerto Rico reversed the order (R. 102). By virtue of its judgment, petitioner is bound to pay taxes for the fiscal year 1941–1942 in the amount of $2,957.96 (see e. g. R. 112–113).

Petitioner filed a notice of appeal to the Circuit Court of Appeals for the First Circuit (R. 111–112), together with an affidavit asserting that the amount in controversy was $55,000 (R. 112–113).

Respondents moved to dismiss on the ground that the value in controversy did not exceed $5,000 (R. 127). The Circuit Court of Appeals dismissed the appeal on the authority of *Elgin* v. *Marshall,* 106 U. S. 578, and *Healy* v. *Ratta,* 292 U. S. 263 (R. 127). On December 12, 1947, it denied a petition for rehearing (R. 132).

ARGUMENT

The appeal to the court below did not involve a federal question. As that court observed (R. 130), "the case involves merely the interpretation, and application to a particular set of facts, of an insular law according tax exemption to property devoted to charitable purposes." Under the statute, the appeal could be maintained only if it were one "wherein the value in controversy, exclusive of interests and costs, exceed $5,000." (Section 128, Judicial Code as amended, 28 U. S. C. sec. 225.) The judgment of the insular court merely required petitioner to pay $2,957.96. Obviously, then, the "value in controversy" on this appeal fell short of the requisite jurisdictional amount. *Elgin* v. *Marshall,* 106 U. S. 578; *Gibson* v. *Shufeldt,* 122 U. S. 27, 29; *Vicksburg &c. Railroad Co.* v. *Smith,* 135 U. S. 195, 200; *New England Mortgage Co.* v. *Gay,* 145 U. S. 123, 130–131; *Healy* v. *Ratta,* 292 U. S. 263, 267.

It may be, as petitioner asserts (Pet. 21–25), that, as a collateral consequence of the judgment, it will be compelled to pay taxes for many years

before and after 1941–1942. But this consideration is irrelevant. "It is not the actual value of the judgment sought to be reviewed which confers jurisdiction, * * * it is the nominal or apparent sum or value of the subject-matter of the judgment." *Elgin* v. *Marshall,* 106 U. S. 578, 581. The question there decided is indistinguishable from the one presented here.

In *Elgin* v. *Marshall,* holders of bonds issued by the Town of Elgin sued to recover interest due thereon. The defendant asserted that the bonds and coupons were invalid. But the trial court entered judgment for plaintiffs for $1,660.75. The Town sued out a writ of error to this Court. Its appellate jurisdiction, like that of the court below in the case at bar, extended only to decisions in which the matter in dispute exceeded $5,000. The Town, however, argued that the plaintiffs owned bonds in the amount of $7,500; that they had obtained an adjudication conclusive upon the Town of its liability to pay the principal sum due, and that consequently the value in controversy exceeded $5,000.

This Court said (106 U. S. at p. 579):

> It is true that the point actually litigated and determined in this action was the validity of the bonds, and as between these parties, in any subsequent action upon other coupons, or upon the bonds themselves, this judgment * * * might, and as to all questions actually adjudged would, be conclusive as an estoppel.

Nevertheless, it held that the statutes limiting its appellate jurisdiction had "reference to the matter which is directly in dispute, in the particular cause in which the judgment or decree sought to be reviewed, has been rendered, and do not permit us, for the purpose of determining its sum or value, to estimate its collateral effect in a subsequent suit between the same or other parties." Consequently, the Court dismissed the writ of error.

Berryman v. *Whitman College,* 222 U. S. 334, does not support petitioner's contention. The Court did not there hold that the amount in controversy was the sum of several years' taxes. Such a contention was not made in that case. It was a suit to enforce what the Court termed (222 U. S. at p. 344) a "contract of perpetual exemption from taxation." Accordingly, the Court held (pp. 345–348) that the amount in controversy was the value of the contractual right and not—as the taxing authority argued—the amount of taxes which was demanded on the particular occasion when the right was first questioned.

Unlike Whitman College, petitioner does not claim a contract exempting it from taxation. Rather, its claim to immunity rests on a statute which the Territory could have modified or repealed at any time. And it could have removed

itself from danger by ceasing activities and disposing of the properties here taxed. "These, or like considerations," said this Court in *Healy* v. *Ratta,* 292 U. S. 263, 271, "have led to the conclusion that, in suits to enjoin the collection of a tax payable annually * * * the sum due or demanded is the matter in controversy and the amount of the tax * * * is the measure of the jurisdictional amount." So here, the sum due under the assessment for 1941–1942 is the measure of the jurisdictional amount.

Furthermore, as the court below pointed out (R. 132), the exemption from tax depended upon the use to which the property was being put in the particular year for which the tax was assessed and, even if petitioner had succeeded in setting aside the assessment here involved, it could not have obtained an injunction against assessments for other years. Obviously, then, the taxes that might be levied under such assessments may not be considered in determining the value in controversy on an appeal from this assessment.

CONCLUSION

This case presents no issues of general importance. The decision of the court below is correct, and there is no conflict of decisions. The petition for certiorari should be denied.

Respectfully submitted.

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